IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE BILAL NAZKI

and
THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT APPEAL NO : 1328 of 2005

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/06/2005 in WP NO : 12543 OF 1998 on the file of the High Court.)

Between:

Andhra Pradesh Adovate's Clerk Welfare Fund High Court Buidlings, Hyderabad rep. by its Secretary Mr.P.Gopal Reddy S/o.late Sri P.Vithal Reddy R/o.Hyderabad.

..... APPELLANT

AND

1 M.Suryanarayana Murthy S/o.Atchutaramayya
R/o.Hyderabad.
2 The Government of A.P. rep by its Secretary, Law Courts and Justice Department, Secretariat, Hyderabad.

....RESPONDENTS

Counsel for the Appellant:MR.L.NANDA KISHORE Counsel for the Respondents: GP FOR HOME

The Court made the following :

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THE HON'BLE MR. BILAL NAZKI,

THE ACTING CHIEF JUSTICE

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

W.A.NO.1328 OF 2005

J U D G M E N T (Per Hon'ble Sri Justice G.Chandraiah)

Heard the learned counsel appearing for the parties.

2. Aggrieved by the order of the learned single Judge in W.P.No.12543/1998 dated 7.6.2005 in allowing the writ petition by restoring the membership of the writ petitioner to A. P. Advocates' clerks' Welfare Fund (for short 'Welfare Fund'), the 2nd respondent in writ petition – A. P. Advocates' Clerks' Welfare Fund represented by its Secretary, filed this writ appeal.

3. The case of the 1st respondent herein, who is the writ petitioner, is that he started the career as an Advocate Clerk in the year 1948 at Madras, and before shifting to A.P. High Court at Hyderabad, he worked at Guntur. After promulgation of the Andhra Pradesh Advocates' Clerks' Welfare Fund Act, 1992 (for brevity 'the Act'), he became member on 24.4.1993. While so, the Secretary of the A.P. High court Advocates' Clerks' Association at the instance of the President of the Association, through letter dated 18.3.1997 informed that the 1st respondent was doing typing work in the premises of the High Court by obtaining permission from the Registrar. In the General Body meeting it was resolved to drop further action pursuant to the complaint dated 18.3.1997. However, on the said ground, the appellant issued notice dated 22.4.1997 calling upon him why his name be not removed from the membership of the Welfare Fund. The 1st respondent submitted his explanation on 25.4.1997 supported by a certificate given by an Advocate, with whom he was working as Clerk-cum-Typist. The case of the 1st respondent in the explanation is that since keeping of typewriter in the premises of the High Court is not permitted, he obtained permission from the Registrar to work as typist in the High Court, but he used to type only the dockets and other miscellaneous work of Advocate with whom he was working, and that sometimes he used to get the said typing done by his junior clerks. His specific case is that though he obtained job typist permission from the Registrar, he never attended work of other Advocates. In support of his case he also filed the certificate dated 25.4.1997 issued by the Advocate Sri A.T.M.Rangaramanujam. However, the committee of the 2nd respondent by virtue of the powers conferred under Section 15(1) of the Act, passed orders on 16.7.1997 removing him name from the membership of the welfare fund and the review filed by him under Section 20 of the Act, was also rejected. Therefore, he filed writ petition.

4. The appellant herein filed counter and denied the writ averments.

5. Considering the material available on record and the respective contentions and

by detailed reasoning, the learned single Judge allowed the writ petition.

6. In the writ appeal, the learned counsel appearing for the appellant contended that having taken note of the fact that the 1st respondent had taken permission from the Registrar of High Court to attend to job typing works as on the date when he applied for membership in the Welfare Fund, the learned single Judge ought to have dismissed the writ petition. He contended that the 1st respondent having obtained permission from the Registrar in the year 1987 to do job typing works, misrepresented in form no.3, which is submitted for membership of Welfare Fund, that he is not in fulltime service or business or any such part time business or other avocation and on this ground also the learned single Judge ought to have dismissed the writ petition. He further contended that the learned single Judge misconstrued the word 'job typing'. He further contended that the benefit of the Welfare Fund has to be given only to Advocate Clerks, who have been assisting the Advocates and who have no other source of income and such benefit cannot be extended to persons, who are engaged in job typing works. With these contentions, the learned counsel for the appellant sought for setting aside the order of the learned single Judge.

7. On the other hand the learned counsel appearing for the 1st respondent reiterating the arguments in writ petition, sought for dismissal of the writ appeal. He further submitted that the Secretary of the Association, at the instance of the President, who are inimical towards 1st respondent, gave complaint dated 18.3.1997 stating that he was attending to job works. But however, the General Body of the Association taking note of the highhandedness of the President, resolved to drop the further action pursuant to the complaint. Again the show cause notice and impugned orders were passed and this shows that the orders were passed in haste and without application of mind.

8. From the above, the specific case of the 1st respondent is that, as keeping of typewriter is not permitted in the High Court premises, he obtained job typist permission from Registrar, but at no point of time he attended the job work of others and he used to only type the dockets and other miscellaneous works of the cases of the Advocate, with whom he was working as Advocate clerk. To support the stand taken by him, he filed the certificate issued by the Advocate Sri A.T.M.Rangaramanujam. Further it is not the case of the appellant that the 1st

respondent was found soliciting clients for job typing works or was physically found attending to job typing works of persons other than the Advocate with whom he was working as Advocate Clerk and it is also not the case of the appellant that 1st respondent obtained membership to the Welfare Fund by fraud or by misrepresentation or by exerting undue influence. Considering these circumstances, the learned single Judge observed that it cannot conclusively be held that the 1st respondent was working as job typist. The learned single Judge also found that the 1st respondent was working as Advocate Clerk since 1948 and that when he was removed from the rolls, he was aged about 68 years and, therefore, it would be unwise to believe that he was attending to arduous typing works running into several pages. Having regard to the fact that the petitioner rendered services for nearly 50 years as an Advocate Clerk, the learned single Judge held that it would be improper to deny him the benefit of welfare fund, which is constituted for the welfare of the Advocate clerks. Considering the provisions of the Act, the learned single Judge also held that, the removal of the 1st respondent on the ground that he obtained job typist permission and that does not come within the definition of Advocates clerks as defined under Section 2(1) of the Act, cannot be sustained.

9. As noted by the learned single Judge, the Act is a benevolent legislation for the welfare of the Advocate clerks, who are engaged in assisting the Advocates in their noble profession, by attending to clerical and other incidental jobs. That being the spirit of the Act, unless and until any member of the association is found to have violated the statutory rules in any manner by indulging in any activities, opposed to the spirit of the Act, it is not justifiable to cancel the membership of any member. In the instant case, admittedly the 1st respondent was working as an Advocate Clerk since 1948 and the appellant did not prove that the 1st respondent has violated any statutory provisions of the Act or the Rules made thereunder. Therefore, the learned single Judge has rightly set aside the impugned orders and ordered restoration of the membership to the 1st respondent in the Welfare Fund.

10. Having regard to the above facts and circumstances of the case, the grounds raised in the writ appeal are not sustainable in law and we do not find any illegality or irregularity in the order passed by the learned single Judge and as such the writ appeal is accordingly dismissed. No order as to costs.

BILAL NAZKI, HACJ

G.CHANDRAIAH,J

AVS

DATE:02-09-2005